IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

CIVIL APPLICATION NO.2135 OF 2004
IN
WRIT PETITION NO.493 OF 1999

The Secretary, Rayat
Shikshan Sanstha & Anr.....Petitioners

Versus

Shri Anil A. Ahivale & Ors..Respodnents

Mr. J.N.Shivadhankar, for the Petitioners
Mr. Vishwanath Talkute, for the Respondent No.2.
Mr.C.R.Sonawane,AGP for Respnodent Nos. 1 and 2.

CORAM : F.I. REBELLO & S.P. KUKDAY,JJ.
DATED : 11th February, 2005

P.C.:

. Civil Application was for setting aside the order of dismissal dated 18th June, 2001. The same was taken out on 2nd November, 2002. Along with the Civil Application we have heard the petitioner on the merits of the petition itself.

2. The Respondent No.1 as per finding of the University Tribunal was appointed and placed on probation. During the period of probation no adverse remarks were communicated to the Respondent No.1. The Tribunal has, therefore, recorded a finding that the Respondent No.1 had completed his probationary period satisfactorily and that he was permanent teacher in the College. This finding is recorded in paragraph 20 of the

order of the Tribunal.

3. It appears that the respondent No.1 herein was seeking that he be placed in the proper scale and that he be paid arrears of salary. In so far as the arrears of salary between 15th March, 1993 to 20th March, 1993, from 20th April, 1993 to 30th June, 1993 and from 11th September, 1995 to 12th October, 1995, have been held to be barred by limitation. The respondent No.1 has not challenged the same and consequently we do not propose to go into that issue.

4. The Respondent No.1's services came to be terminated by letter dated 22nd January, 1997 on the ground that the Respondent No.1 had remained absent without intimation. It was pointed out that considering Statue No.223 of the Statute of Shivaji University it was deemed that the Respondent No.1 had abandoned the services. Another letter was written on 4th February, 1997 setting out that the respondent No.1 had abandoned the services as per Statue No.223 with effect from 23rd December, 1996. It is against this order that the Appeal was preferred. There was a delay in filing the Appeal which the Tribunal has noted in paragraph 19 of the order and conded the delay. Once the discretion is exercised by the Tribunal it would not be open to this Court to interfere

with the exercise of said discretion unless it is shown that it was based on non-existing material. No such arguments has been advanced nor material shown to us. We are, therefore, not inclined to interfere with the finding recorded by the learned Tribunal in the matter of condonation of delay in preferring the Appeal.

3. That takes us to the issue on merits of the matter itself. From the record it appears that the Respondent No.1 was serving in Mahila Mahavidyalaya from 15th March, 1993 to 10th September, 1995. He was transferred from there to Hupari by order dated 4th September, 1995 where he joined on 11th September, 1995. He was again transferred from Hupari to Koregaon by transfer order dated 10th October, 1995 where he joined on 13th October, 1995. He was once again transferred by order dated 23rd June, 1996 from Koregaon to College at Hupari College. The Respondent joined at Hupari College on 19th July, 1996. In between there are other orders of transfer, one on 17th September, 1995 which was cancelled by subsequent order of 26th July, 1995. He was transferred from Koregaon College to Pimpri-Waghire by order dated 10th July, 1996 which again was cancelled. The Tribunal has recorded a finding that these transfers were merely because the respondent No.1 herein was claiming salary according to the scale

and that he was being harassed by effecting his transfer from one College to another college only because he was claiming salary according to the Scale.

4. In so far as the order of dismissal is concerned which was to be effective from 23rd December, 1996 there is a finding recorded that the Respondent No.1 sent telegram on 23rd December, 1996 setting out that he could not join as he was sick. That telegram was received by the Incharge Principal at Hupari College and this is reflected in the letter of the Petitioners dated 30th December, 1996 which is adverted to by the Tribunal in paragraph 23 of its judgment. It is, therefore, clear that the respondent had sent communication that he was sick and as that was received it could never have been the case of the petitioners that there was abandonment of service by the Respondent NO.1 on 23rd December, 1996. Apart from that the Tribunal has noted that the petitioners gave no opportunity to the Respondent No.1. It has also considered the medical certificate produced by the respondent No.1 to show that he was sick and that he was allowed to resume on 10th June, 1997. These are purely findings of fact based on record. Apart from that we find no reasons to differ from the view taken by the Tribunal that a permanent teacher before

being removed or for the contention that there was abandonment of service, ought to have been given an opportunity to give his say in the matter. No such opportunity was given.We, therefore, do not find any merit in the present petition. Considering the above, the following order:-

1. Civil Application NO.2135 of 2004, though sufficient cause has not been shown, is allowed in terms of prayer clause (a).

2. However, on merits the Writ Petition is dismissed. Rule discharged. No order as to costs.

3. We direct the petitioners considering that there is no stay of the order the respondent NO.1 be paid his back wages as directed within a period of three months from today.

Certified copy expedited.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)